

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROBERT ALLEN VAN ORDEN,	:	
	:	
Plaintiff,	:	<b><u>ORDER OF DISMISSAL</u></b>
v.	:	
CITY OF PORT JERVIS, et al.,	:	20-CV-07207 (PMH)
	:	
Defendants.	:	

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On September 3, 2020, Robert Allen Van Orden (“Plaintiff”) commenced the instant action against the City of Port Jervis and four other Defendants. The case proceeded into discovery and Defendants took Plaintiff’s deposition on October 27, 2022. (*See* Doc. 51-1, “Tr.”). Defendants informed the Court that, at that deposition, Plaintiff advised that he no longer wished to pursue this matter and intended to voluntarily dismiss the case. (*Id.* 85:11-87:22). Defendants advised Plaintiff that should he wish to dismiss the case, he ought to file a stipulation of dismissal with the Court. (*Id.* at 87). Plaintiff, however, did not take action after his deposition and Defendants sought leave to move to dismiss under Federal Rule of Civil Procedure 41(b) on December 15, 2022. (Doc. 51).

The Court directed Plaintiff to respond to Defendants letter by December 30, 2022 and warned that “[f]ailure to do so may result in dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).” (Doc. 53). Plaintiff failed to respond and Defendants again sought dismissal on January 12, 2023. (Doc. 56).

The Court again directed Plaintiff to respond, giving him until January 24, 2023 to do so, and warned that “[s]hould Plaintiff fail to respond by January 24, 2023, the Court *will* dismiss this action with prejudice pursuant to Federal Rule of Civil Procedure 41(b).” (Doc. 57 (emphasis added)). Plaintiff failed to respond and Defendants sought dismissal for a third time on February

7, 2023. (Doc. 59). Plaintiff was given an opportunity to respond to Defendants' February 7, 2023 letter and he has failed to do so.

It has been nearly four months since Plaintiff's deposition at which he expressed his desire to discontinue this action and two months since the Court first directed Plaintiff to respond. Moreover, Plaintiff has failed to respond to two Court Orders warning him that his case would be dismissed. Accordingly, this case is dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b).<sup>1</sup>

The Clerk of Court is instructed to: (i) mail a copy of this Order to Plaintiff; (ii) terminate the motion sequences pending at Docs. 56 and 59; and (iii) close this case.

**SO ORDERED:**

Dated: White Plains, New York  
February 15, 2023

  
Philip M. Halpern  
United States District Judge

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<sup>1</sup> Rule 41(b) provides that "any dismissal under this rule . . . operates as an adjudication on the merits." Fed. R. Civ. P. 41(b).